

DISPOSITION AND DEVELOPMENT AGREEMENT

(Napa Courtyards)

between

County of Napa

and

Idaho Pacific West Communities, Inc.,

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DISPOSITION AND DEVELOPMENT AGREEMENT
(Napa Courtyards)

This Disposition and Development Agreement (the "Agreement") is entered into as of March 1, 2016 (the "Effective Date"), by and between the County of Napa, a political subdivision of the State of California (the "County"), and Idaho Pacific West Communities, Inc., an Idaho corporation (the "Developer"), with reference to the following facts, understandings and intentions of the parties:

RECITALS

A. These Recitals refer to and utilize certain capitalized terms which are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. The County owns the Property, which is located at 535 Coombsville Road, Napa, California (APN 046-011-017 and 046-011-018), within the incorporated limits of the City of Napa, as more particularly described in the attached Exhibit A.

C. On August 12, 2014, as further extended on June 23, 2015, the County entered into an Exclusive Negotiating Rights Agreement with the Developer. On February 16, 2016 the Developer received the Land Use Approvals from the City for the Development, which includes twenty (20) multifamily units.

D. On February 16, 2016, the City adopted a Mitigated Negative Declaration ("MND") for the Development. No subsequent or supplemental environmental review is required for the Development, in that no changes have been made in the Development approved by the City; and there is no substantial evidence that any of the conditions listed in CEQA Guidelines Section 15162 exist that would require further environmental review, in that there are no changed circumstances since the MND was adopted that would involve new significant effects; and no new information shows that the Development will have significant effects not discussed in the MND.

E. The Board of Supervisors has determined that the Property can be used to provide housing affordable to persons and families of low or moderate income, as defined by Health & Safety Code Section 50093, and has further determined that this use is in the County's best interests. The Developer desires to purchase the Property for this use. The County has therefore determined that the Property may be sold to the Developer under the provisions of Government Code Section 25539.4 and that its sale is not subject to the requirements of Article 8, Chapter 5 of Division 2, Title 3 of the Government Code (commencing with Section 25520), as provided in Section 25539.4. At least nine (9) of the units in the Development (45 percent) shall be affordable to extremely low and very low income households earning between 30 percent and 50 percent of area median income, and the remainder of the units, excluding one manager's unit, shall be affordable to households earning no more than 90 percent of area median income.

F. In accordance with the provisions of California Government Code Section 25539.4, the Board of Supervisors makes the following findings:

1. The Property can be used to provide housing affordable to persons and families of very low and low income, and this use of the Property is in the County's best interests.

2. The Approved Plans show that at least eighty percent (80%) of the area of the Property shall be used for development of housing. At least 45 percent of the total units in the Development are proposed to be affordable to very low and low income households whose incomes are equal to or less than 75 percent of the maximum income for lower income households (the "Lower Income Affordable Units"), and all of these units are proposed to be affordable to very low income households.

3. The Lower Income Affordable Units shall be restricted by the Regulatory Agreement to remain continually affordable to very low and low income households for no less than fifty-five (55) years. The Regulatory Agreement contains provisions making its covenants and conditions binding upon successors in interest of the Developer and shall be recorded in the Official Records.

4. The County has therefore determined to sell the Property to the Developer under the terms and conditions that the County has deemed best suited to the provision of affordable units.

G. Under California Health & Safety Code Section 37001(a), the Development is exempt from Article XXXIV of the California Constitution as privately owned housing receiving no property tax exemption other than exemptions granted under Revenue and Taxation Code Sections 214(f) and (g), and no state public body requires more than 49 percent of the units in the Development to be occupied by low income households.

H. The County and the Developer have established the terms and conditions for the sale and development of the Property. The County has determined that the Developer has the necessary expertise, skill and ability to carry out the commitments set forth in this Agreement.

I. On March 1, 2016, the County authorized the sale of the Property to Developer on certain terms and conditions and further authorized the Chair of the Board to execute this Agreement in a form approved by County Counsel. Upon the Developer's satisfaction of the conditions set forth in this Agreement, the County agrees to convey the Property to the Developer, and the Developer agrees to purchase the Property from the County.

J. On March 1, 2016, the County Board of Supervisors further adopted Resolution No. 2016- authorizing a loan at an interest rate below the market rate in the amount of One Million Fifty-One Thousand Dollars (\$1,051,000) Dollars (the "County Loan") to the Developer to assist in the construction of the Development and further authorized the Chair to execute all necessary loan documents to effect the County Loan and all related documents as required for ongoing future maintenance and monitoring of the Development, in a form approved by County Counsel.

K. The Developer intends to finance the remainder of the costs of the Development with Tax Credit Funds and other public and private sources as more particularly set forth in Exhibit B attached to this Agreement, which provides the Developer's Financing Proposal as of the Effective Date, including an estimate of the sources and uses of funds for the construction of the Development.

THEREFORE, the Parties agree as follows:

AGREEMENT

The foregoing recitals are hereby incorporated by reference and made part of this Agreement.

ARTICLE 1. **DEFINITIONS AND EXHIBITS**

Section 1.1 Definitions.

(a) "Approved Plans" means the Mitigation Monitoring and Reporting Program and all designs for the Development approved by the City on February 16, 2016 in conjunction with the Land Use Approvals for the Development.

(b) "Board of Supervisors" is the Board of Supervisors of the County of Napa.

(c) "Building Permit" means the building permit and all other ministerial construction permits required from the City and other governmental agencies to construct the Development.

(d) "City" means the City of Napa, a municipal corporation

(e) "Close of Escrow" means the date on which the Property is conveyed to the Developer by the County.

(f) "Code" means the Internal Revenue Code of 1986, as amended.

(g) "Construction Plans" means the final construction plans for the construction of the Development submitted for a Building Permit.

(h) "Control" means (i) direct or indirect management or control of the managing member or members in the case of a limited liability company; (ii) direct or indirect management or control of the managing general partner or general partners in the case of a partnership and (iii) (a) boards of directors that overlap by fifty percent (50%) or more of their directors, or (b) direct or indirect control of a majority of the directors in the case of a corporation.

(i) "County" means the County of Napa, a political subdivision of the State of California.

(j) "County Documents" means, collectively, this Agreement, the Regulatory Agreement, documents required to be executed related to the County Loan, and all other documents required by the County to be executed by the Developer in connection with the transaction contemplated by this Agreement. "County Document" means any of the County Documents.

(k) "County Loan" is defined in Recital J.

(l) "Default" has the meaning set forth in Section 6.3.

(m) "Developer" means Idaho Pacific West Communities, Inc., an Idaho corporation, and its successors and assigns as permitted by this Agreement.

(n) "Developer Event of Default" has the meaning set forth in Section 6.3.

(o) "Development" means the twenty (20)-unit multifamily housing development and related appurtenant uses consistent with the Approved Plans and Land Use Approvals, to be developed on the Property by the Developer.

(p) "Effective Date" means the date this Agreement is entered into by the Parties as first written above.

(q) "Financing Plan" means the Developer's plan for financing the acquisition of the Property and the construction of the Development, including a detailed development budget, construction and permanent financing commitment letters, and a commitment letter from the Investor, to be approved by the County pursuant to Section 3.4, and which may be revised from time to time with the approval of the County pursuant to Section 3.4.

(r) "Financing Proposal" means the Developer's initial financing proposal for financing the acquisition of the Property and the construction of the Development, in the form attached hereto as Exhibit B.

(s) "General Partner" means any general partner of the Partnership, including, but not limited to the Managing General Partner.

(t) "Hazardous Materials" means: any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Section 25281(d) or 25316 of the California Health and Safety Code as amended from time to time;

(1) any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code as amended from time to time;

(2) any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA (42 U.S.C. Section 9601 et seq., Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clean Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 39000 et seq.), or California Water Code (Section 13000 et seq.) as amended from time to time; and

(3) any additional wastes, substances or materials which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Development.

The term "Hazardous Materials" shall not include: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, construction, or management of residential apartments, or typically used in office or residential activities, or (ii) certain substances which may contain

chemicals listed by the State of California pursuant to California Health and Safety Code Sections 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Development, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine.

(u) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Development or any portion thereof.

(v) "Investor" means a reputable equity investor, reasonably acceptable to the County, committed to purchasing a limited partnership interest in the Partnership.

(w) "Land Use Approvals" are the discretionary planning permits required for the Development from the City, including a use permit, design review permit, and sign permit, as approved by the City Council of the City on February 16, 2016. .

(x) "Lower Income Affordable Units" means the nine (9) dwelling units to be constructed as part of the Development and required by the County to be occupied by very low income households, as provided in Health & Safety Code Section 50105, and to be made affordable to such households in accordance with Health & Safety Code Section 50053, as more particularly set forth in the Regulatory Agreement.

(y) "Managing General Partner" means the managing general partner of the Partnership, which shall be an entity that meets the requirements necessary for the Partnership to be eligible for a property tax exemption pursuant to California Revenue & Taxation Code 214(g).

(z) "MND" is the Mitigated Negative Declaration adopted for the Development by the City on February 16, 2016.

(aa) "Official Records" means the official land records of the County.

(bb) "Parties" means, collectively, the County, and the Developer. "Party" shall refer to either of the Parties.

(cc) "Partnership" means the California limited partnership to be formed by the Developer for the construction of the Development on the Property. The Partnership shall consist of: (i) the Developer, or an entity under the Control of the Developer, as a general partner of the Partnership, (ii) the Managing General Partner, and (iii) the Investor, or an entity under the Control of the Investor, as a limited partner.

(dd) "Partnership Agreement" means the partnership agreement of the Partnership, as may be amended from time to time.

(ee) "Property" means the real property to be developed by the Developer pursuant to this Agreement, which real property is more particularly described in Exhibit A.

(ff) "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants by and between the Parties to be recorded against the Property at Close of Escrow, in a form substantially similar to Exhibit D

(gg) "Security Financing Interest" means a mortgage, deed of trust, or other reasonable method of security encumbering the Property that secures any loan and/or refinancing approved by the County in connection with the approval of the Financing Plan.

(hh) "Supplemental Financing" means any financing received by the Developer for the Development, including the Tax Credit Funds, other than the County Loan.

(ii) "Tax Credit Funds" means all of the proceeds from the sale of limited partnership interests in the Partnership to the Investor in the anticipated amount set forth in the Financing Plan, or such other amount as may be approved by the County in an amended Financing Plan.

(jj) "Tax Credit Reservation" means a preliminary reservation, or allocation (as applicable), of federal low income housing tax credits from TCAC.

(kk) "TCAC" means the California Tax Credit Allocation Committee.

(ll) "Term" means the term of this Agreement, which shall consist of the period commencing as of the Effective Date and continuing until the earlier of: (i) Close of Escrow; or (ii) December 31, 2017, unless this date is extended pursuant to Section 4.2.

(mm) "Title Company" means First American Title Company of Napa, or such other title company as the Parties may mutually select.

(nn) "Title Report" means that certain title report dated January 7, 2016, issued by the Title Company for the Property.

(oo) "Transfer" has the meaning set forth in Section 5.1.

Section 1.2 Exhibits.

The following exhibits are attached to and incorporated in the Agreement:

Exhibit A:	Legal Description of the Property
Exhibit B:	Financing Proposal
Exhibit C:	Form of Grant Deed
Exhibit D:	Form of Regulatory Agreement

ARTICLE 2. **PURCHASE PRICE**

The purchase price to be paid by the Developer to the County for the Property is One Million Fifty-One Thousand Dollars (\$1,051,000) (the "Purchase Price"), which is the appraised value of the Property. The Purchase Price shall be paid to the County at Close of Escrow.

ARTICLE 3.
PREDISPOSITION REQUIREMENTS FOR CONVEYANCE OF THE PROPERTY

Section 3.1 Conditions Precedent to Disposition of the Property.

The requirements set forth in this Article 3 are conditions precedent to the County's obligation to convey the Property to the Developer. The County shall have no obligation to convey the Property to the Developer unless the Developer has satisfied the conditions precedent set forth in this Article 3 in the manner set forth below and within the timeframe set forth in the Development Schedule.

Section 3.2 Expiration of Limitations Periods; No Litigation.

Prior to Close of Escrow, the limitations periods for the Land Use Approvals and the County Loan established by Government Code Sections 65009(c) and 66499.37 and by the California Environmental Quality Act shall have expired, and a final judgment shall have been entered in any litigation, claim, proceeding, or other action relating to the Land Use Approvals or the County Loan.

Section 3.3 Financing Proposal and Financing Plan.

(a) Financing Proposal; Applications for Supplemental Financing. As of the Effective Date, the Developer has submitted the preliminary Financing Proposal attached to this Agreement as Exhibit B. The Developer shall diligently pursue commitments for all Supplemental Financing included in the Financing Proposal.

(b) Application for 9% Low-Income Housing Tax Credits. The Developer will submit to the California Tax Credit Allocation Committee an application for 9% low-income housing tax credits in the March 2016 round, unless the County, in its sole discretion, agrees that the initial application may be made in the July 2016 round. If a March 2016 application is unsuccessful, the Developer will submit an application for 9% low-income housing tax credits in the July 2016 round; and if unsuccessful, in the March 2017 round.

(c) Delivery of 9% Low-Income Housing Tax Credit Applications. The Developer will promptly deliver to the County, within five (5) days of initial submission, a full copy of any application(s) submitted to the California Tax Credit Allocation Approval Committee.

(d) Execution of County Loan Documents. The Developer will approve and execute all documents required for closing and funding of the County Loan, including without limitation any loan agreement, note, deed of trust, subordination agreement, or any other agreement required, prior to, or simultaneously with, the conveyance of the Property.

Section 3.4 Submittal of Proposed Financing Plan.

At least ninety (90) days prior to the Close of Escrow, the Developer shall submit to the County for approval a proposed Financing Plan, including commitment letters and related documentation from the Investor and from all sources of Supplemental Financing and setting forth the Developer's revisions to the Financing Proposal based on such commitment letters. The County shall reasonably approve or disapprove the proposed Financing Plan in writing within thirty (30) calendar days of the County's receipt of all such documentation; provided, however, in no event shall the County approve of any proposal that requires that requires any

portion of the County Loan in excess of the Purchase Price: (i) be disbursed prior to the funding of any other construction financing secured by a Security Financing Interest; (ii) the Managing General Partner be an entity that does not have sufficient experience or other qualifications regarding the ownership or operation of affordable housing developments similar to the Development; or (iii) the Partnership Agreement is not structured to permit the Partnership to be eligible for a property tax exemption pursuant to California Revenue and Taxation Code 214(g). The Developer shall not rely on the County's approval of the Financing Plan as a representation of any kind, including but not limited to the business advantage of the terms of any of the Supplemental Financing or any documentation thereof. The County's approval shall merely constitute satisfaction of the condition set forth in this Section. If the proposed Financing Plan is disapproved by the County, the Developer shall have fifteen (15) calendar days from the date of the Developer's receipt of the County's notice of disapproval to submit a revised Financing Plan. The provisions of this Section relating to time periods for approval, disapproval and resubmission of a new Financing Plan shall continue to apply until the revised Financing Plan has been approved by the County; provided, however, that if the County's approval of the revised Financing Plan has not been obtained by November 30, 2017, the County may terminate this Agreement pursuant to Article 6.

Section 3.5 Close of Escrow of Supplemental Financing; Evidence of Availability of Funds.

The County Loan and all Supplemental Financing necessary to purchase the Property and construct the Development, as approved by the County in the Financing Plan, shall be closed by the Developer prior to, or simultaneously with, the conveyance of the Property by the County to the Developer. The Developer shall also submit to the County evidence, reasonably satisfactory to the County, that any conditions to the release or expenditure of the Supplemental Financing described in the approved Financing Plan have been met, or will be met upon conveyance of the Property to the Developer, and that such funds will be available upon such conveyance for purchasing the Property and, subject to the Developer's satisfaction of standard disbursement preconditions required to be satisfied on a periodic basis, for constructing the Development.

Section 3.6 Construction Plans and Building Permit.

(a) The Developer shall prepare Construction Plans for the construction of the Development. The Construction Plans shall be based upon the Approved Plans and the Land Use Approvals and shall not materially deviate from them without the written consent of the City and the County.

(b) The Developer shall apply for a Building Permit allowing for the construction of the Development called for in the Construction Plans. After submitting an application for a Building Permit, the Developer shall diligently pursue and obtain a Building Permit for the Development. For the purposes of this Agreement, the Developer shall be deemed to have satisfied the obligation to obtain the Building Permit for the Development by delivering evidence to the County that the Developer is entitled to issuance of a Building Permit for the Development upon payment of applicable permit fees. Only upon delivery to the County of such evidence in a form reasonably satisfactory to the County shall the predisposition condition of this Section be deemed met.

(c) As part of the Developer's application for a Building Permit, the County shall have the right to review and approve the proposed Construction Plans for conformance

with the Approved Plans, the Land Use Approvals, and any commitments made by the Developer to the County. The County shall have no obligation to approve such proposed plans in the event that the Developer fails to incorporate the County's reasonably requested modifications to the proposed Construction Plans to conform to the Approved Plans.

Section 3.7 Construction Contract.

(a) At least forty-five (45) days prior to the Close of Escrow, the Developer shall submit to the County for its limited approval the proposed construction contract for the Development. The County's review and approval shall be limited exclusively to a determination whether: (i) the guaranteed maximum construction cost, or stipulated sum, set forth in the construction contract is consistent with the approved Financing Plan; (ii) the construction contract is with a contractor duly licensed by the State of California and reasonably acceptable to the County; (iii) the construction contract contains provisions consistent with this Agreement; and (iv) the construction contract requires a retention of ten percent (10%) of hard costs until completion of the Development (provided, however, the construction contract may provide for the release of retention, prior to completion of the Development, to certain specified subcontractors that have completed all of their work on the Development as reasonably approved by the County, and, provided, further, that such early retention amount shall be based on the subcontractor's initial contract sum, and shall exclude any increase in the contract sum due to change orders, or otherwise). The County's approval of the construction contract shall in no way be deemed to constitute approval of, or concurrence with, any other term or condition of the construction contract.

(b) Upon receipt by the County of the proposed construction contract, the County shall promptly review same and approve it within fifteen (15) days if it satisfies the limited criteria set forth above. If the construction contract is not approved by the County, the County shall set forth in writing and notify the Developer of the County's reasons for withholding such approval. The Developer shall thereafter submit a revised construction contract for County approval, which approval shall be granted or denied in fifteen (15) days in accordance with the criteria and procedures set forth above. Failure of the County to respond within the fifteen (15) day period(s) set forth above shall be deemed approval by the County. Any construction contract executed by the Developer for the Development shall be in a form approved or deemed approved by the County.

(c) The Developer shall not rely on the County's approval of the construction contract(s) as a representation regarding the enforceability or business advantage of the construction contract(s). County approval shall merely constitute satisfaction of the condition set forth in this Section.

Section 3.8 Construction Bonds.

(a) At least thirty (30) days prior to the Close of Escrow, the Developer shall deliver to the County forms of one (1) labor and material bond and one (1) performance bond for the Development issued by a reputable insurance company licensed to do business in California, and named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department, and reasonably acceptable to the County, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of the Development for the County's review and approval. The bonds shall name the County as co-obligee. Upon receipt by the County of the proposed payment and performance bonds, the County shall promptly review

such bonds and approve them within fifteen (15) days if they satisfy the criteria set forth above, and include any other modification reasonably requested by the County. If the payment and performance bonds are not approved by the County, the County shall set forth in writing and notify the Developer of the County's reasons for withholding such approval. The Developer shall thereafter submit revised payment and performance bonds for County approval, which approval shall be granted or denied in fifteen (15) days in accordance with the criteria and procedures set forth above. Failure of the County to respond within the fifteen (15) day period(s) set forth above shall be deemed approval by the County.

(b) Notwithstanding subsection (a) above, the Developer may propose an alternate form of security to ensure performance and payment of labor and materials, which provides security equivalent to the bonds required under subsection (a). The proposed forms evidencing the alternate form of security shall be delivered to the County at least sixty (60) days prior to Close of Escrow, and the County shall review such forms within fifteen (15) days and determine in its sole discretion whether the alternate form of security is equivalent to the bonds required under subsection (a). If the alternate form of security is not approved by the County, the County shall set forth in writing and notify the Developer of the County's reasons for withholding such approval, and the Developer shall provide the bonds required by subsection (a).

(c) Prior to the Close of Escrow, the Developer shall deliver to the County copies of actually issued bonds or alternate form of security substantially identical to the forms previously delivered to, and approved by, the County. The Developer may elect to satisfy the obligation set forth in this Section 3.8 by delivering bonds which name the Developer's general contractor(s), and not the Developer, as the principal. Only upon County receipt of such bonds or alternate form of security shall the pre-disposition conditions of this Section 3.8 be deemed met. If such bonds or alternate form of security are not received within the time set forth above, this Agreement may be terminated pursuant to Article 6.

Section 3.9 Insurance.

The Developer shall furnish to the County evidence of the insurance coverage meeting the requirements set forth in the agreements relating to the County Loan prior to Close of Escrow.

ARTICLE 4. **DISPOSITION OF THE PROPERTY**

Section 4.1 Opening Escrow.

To accomplish the transfer of the Property from the County to the Developer, the Parties shall, within ninety (90) days after the Effective Date, establish an escrow with the Title Company. The Parties shall execute and deliver all written instructions to the Title Company to accomplish the terms hereof, so long as such instructions are consistent with this Agreement.

Section 4.2 Close of Escrow.

(a) The Close of Escrow shall occur within thirty (30) days after the Developer has met all of its pre-disposition conditions as set forth in Article 3 above, but in no event shall the Close of Escrow occur later than December 31, 2017. The County Administrator

may extend the Term by a maximum of six (6) months if, in the Administrator's reasonable discretion, the Developer has made good faith progress in meeting all of the predisposition conditions, and Close of Escrow is reasonably likely to occur by June 30, 2018. Any additional extension of the Term must be approved by the Board of Supervisors.

(b) At the Close of Escrow, the County shall convey the Property to Developer by the execution of the grant deed in substantially the form set forth in the attached Exhibit C.

Section 4.3 Conditions to Conveyance. The County's obligation to convey the Property to the Developer shall be subject to satisfaction of the following pre-conditions:

(a) The conditions precedent set forth in Article 3 above shall have been satisfied.

(b) The representations, warranties, and covenants of the Developer set forth in Section 7.15 shall be true and correct, and fully observed, as of the Effective Date and as of the Close of Escrow.

(c) There exists no Developer Event of Default nor any act, failure, omission or condition that would constitute a Developer Event of Default under this Agreement.

(d) The Developer has delivered to the County a copy of the Developer's organizational documents and corporate resolution(s) authorizing the Developer's execution of this Agreement and the transactions contemplated by this Agreement.

(e) The Developer has executed and delivered to the County the documents required for closing and funding of the County Loan, including without limitation a note, deed of trust, and loan agreement, and the Regulatory Agreement, and the deed of trust and the Regulatory Agreement have been recorded against the Property.

(f) All conditions contained in the County Documents required for the County Loan have been complied with.

(g) A title insurer reasonably acceptable to the County is unconditionally and irrevocably committed to issuing an ALTA Lender's Policy of insurance insuring the priority of the County deed of trust in the amount of the County Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the County, and containing such endorsements as the County may reasonably require.

Section 4.4 Condition of Title.

At the Close of Escrow, the County shall deliver title to the Property free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except those set forth in the Title Report. The developer previously obtained a Title Report for the Property, and the Developer objected to no exception appearing on the Title Report. The Developer may not terminate this Agreement as a result of any of exception appearing on the Title Report.

Section 4.5 Condition of the Property.

(a) In fulfillment of the purposes of Health and Safety Code Section 25359.7(a), to the County's Current Actual Knowledge, no release of Hazardous Materials has come to be located on or beneath the Property, except as previously disclosed by the County to the Developer in that report entitled *Phase I and II Environmental Assessment Report*, prepared by SCS Engineers and dated October 2005. The Developer has previously completed all due diligence activities, including but not limited to a physical adequacy determination of the Property, and may not terminate this Agreement as a result of the purported physical unsuitability of the Property. As used in this Agreement, the phrase "to the County's Current Actual Knowledge" and words of similar import shall mean the actual knowledge of Doug Calhoun (the "County Representative"), on behalf of the County, as of the Effective Date, without any duty of separate inquiry and investigation. The County represents and warrants that the County Representative is that person affiliated with the County most knowledgeable regarding the ownership and operation of the Property. Developer hereby agrees that the foregoing person shall not have or incur any personal liability for the breach of any representation or warranty in this Agreement, and that Developer's sole remedy for any such breach shall be against the County.

(b) **"AS IS" CONVEYANCE.** EXCEPT AS SET FORTH ABOVE, THE Developer SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE County IS CONVEYING AND THE Developer IS ACCEPTING THE LEASEHOLD INTEREST IN THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE Developer IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) OR IMPLIED, FROM THE CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER; (C) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE; (D) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE ADJOINING OR NEIGHBORING PROPERTY; AND (E) THE CONDITION OF TITLE TO THE PROPERTY. THE Developer AFFIRMS THAT THE Developer HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. THE Developer ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE Developer UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH

ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(c) Survival. The terms and conditions of this Section 4.5 shall expressly survive the Close of Escrow, shall not merge with the provisions of the grant deed, or any other closing documents and shall be deemed to be incorporated by reference into the grant deed. The County is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person. The Developer acknowledges that the lease payments reflect the "as is" nature of this transaction and any faults, liabilities, defects or other adverse matters that may be associated with the Property. The Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with the Developer's counsel and understand the significance and effect thereof.

(d) Acknowledgment. The Developer acknowledges and agrees that (i) to the extent required to be operative, the disclaimers of warranties contained in this Section 4.5 hereof are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements, and (ii) the disclaimers and other agreements set forth in such sections are an integral part of this Agreement and that the County would not have agreed to convey the Property to the Developer without the disclaimers and other agreements set forth in this Section.

(e) Developer's Release of the County. The Developer, on behalf of itself and anyone claiming by, through or under the Developer hereby waives its right to recover from and fully and irrevocably releases the County and its council members, employees, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that the Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever, (ii) any presence of Hazardous Materials, and (iii) any information furnished by the Released Parties under or in connection with this Agreement.

(f) Scope of Release. The release set forth in Section 4.5(e) hereof includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the County from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Developer's Initials:_____

Notwithstanding the foregoing, this release shall not apply to, nor shall the County be released from, the County's actual fraud or misrepresentation.

Section 4.6 Costs of Escrow and Close of Escrow.

Ad valorem taxes, if any, shall be prorated as of the Close of Escrow. The lien of any bond or assessment shall be assumed by the Developer and assessments payable thereon shall be prorated as of the date of conveyance. The County shall pay any delinquent ad valorem taxes and any amounts owing for delinquent bonds and assessments as of the date of conveyance. The Developer shall bear the costs of title insurance for the County Deed of Trust, and any owner's title insurance policy desired by the Developer. All other costs of escrow (including the Title Company's fee) shall be evenly borne by the Developer and the County.

ARTICLE 5.
ASSIGNMENT AND TRANSFERS

Section 5.1 Definitions.

As used in this Article 5, the term "Transfer" means:

- (a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement or of the Development or any part thereof or any interest therein or any contract or agreement to do any of the same; or
- (b) Any total or partial sale, assignment or conveyance, of any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in Developer, including but not limited to the admission or withdrawal of any General Partner of the Partnership, or any contract or agreement to do any of the same;
- (c) Any merger, consolidation, sale or lease of all or substantially all of the assets of Developer.

Section 5.2 Purpose of Restrictions on Transfer.

This Agreement is entered into solely for the purpose of the development and operation of the Development and its subsequent use in accordance with the terms hereof and the terms of the County Documents. The Developer recognizes that the qualifications and identity of Developer are of particular concern to the County, in view of:

- (a) The importance of the development of the Property and the affordable units to the general welfare of the community; and

(b) The land acquisition assistance and other public aids that have been made available by law and by the government for the purpose of making such development possible; and

(c) The reliance by the County upon the unique qualifications and ability of the Developer to serve as the catalyst for development of the Property and upon the continuing interest which the Developer will have in the Property to assure the quality of the use, operation and maintenance deemed critical by the County in the development of the Property; and

(d) The fact that the Property is not to be acquired or used for speculation, but only construction of the Development by the Developer in accordance with the Agreement; and

(e) The importance to the County and the community of the standards of use, operation and maintenance of the Property.

The Developer further recognizes that it is because of such qualifications and identity that the County is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 5.3 Prohibited Transfers.

(a) The limitations on Transfers set forth in this Article shall apply throughout the Term. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law without the prior written approval of the County.

(b) Any Transfer made in contravention of this Section 5.3 shall be void and shall be deemed to be a Default under this Agreement whether or not the Developer knew of or participated in such Transfer.

Section 5.4 Transfers with County Consent.

The County may, in its sole discretion, approve in writing such Transfers as requested by the Developer. In connection with such request, the Developer shall submit to the County for review all instruments and other legal documents proposed to effect any such Transfer and all other documents as reasonably requested by the County to determine the qualifications and identity of the proposed transferee. If a requested Transfer is approved by the County such approval shall be indicated to the Developer in writing. Such approval shall be granted or denied by the County within thirty (30) days of receipt by the County of all materials required by this Section 5.4.

ARTICLE 6. **DEFAULT AND REMEDIES**

Section 6.1 General Applicability.

The provisions of this Article 6 shall govern the Parties' remedies for breach or Default under this Agreement.

Section 6.2 No Fault of Parties.

The following events constitute a basis for a Party to terminate this Agreement without the fault of the others:

(a) The County, despite good faith and diligent efforts, is unable to convey the Property to the Developer and the Developer is otherwise entitled to such conveyance.

(b) Prior to the Close of Escrow, the County, despite good faith and diligent efforts, is unable to fund any portion of the County Loan to the Developer and the Developer is otherwise entitled to such funds.

(c) The Developer, despite good faith and diligent efforts, is unable to satisfy one, or more, of the conditions precedent to the conveyance of the Property and the County is otherwise ready and able to convey the Property to the Developer.

Upon the happening of the above-described event and at the election of either Party, this Agreement may be terminated by written notice to the other Party. After such termination of this Agreement, no Party shall have any rights against or liability to the others under this Agreement, except that the indemnification provisions of this Agreement shall survive such termination and remain in full force and effect.

Section 6.3 Events of Default.

Except as to the events constituting a basis for termination under Section 6.2, a Party's violation of any material term of this Agreement or failure by any Party to perform any material obligation of this Agreement shall constitute a default ("Default").

The following shall additionally constitute a Developer Event of Default:

(a) The Developer constructs or attempts to construct the Development in violation of this Agreement, or otherwise fails to comply with any obligation or requirement set forth in this Agreement; or

(b) A Transfer occurs, either voluntarily or involuntarily, in violation of Article 5; or

(c) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the County in connection with this Agreement proves to have been incorrect in any material and adverse respect when made; or

(d) A court having jurisdiction shall have made or entered any decree or order (i) adjudging the Developer, or a General Partner, to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of the Developer, or a General Partner, or seeking any arrangement for the Developer, or a General Partner, under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of the Developer, or a General Partner, in bankruptcy or insolvency or for any of their properties, or (iv) directing the winding up or liquidation of the Developer, or a General Partner, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or

undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection as well; or the Developer, or a General Partner, shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive.; or

(e) The Developer, or a General Partner, shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or prior to sooner sale pursuant to such sequestration, attachment, or execution. In the event that the Developer is diligently working to obtain a return or release of the property and the County's interests under the County Documents are not immediately threatened, in the County's reasonable business judgment, the County may elect not to declare a Default under this subsection; or

(f) The Developer, or a General Partner, shall have voluntarily suspended its business or, the Developer shall have been dissolved or terminated; or

(g) There shall occur any default declared by the County under any other County Document.

Upon the happening of any of the above-described events, the non-defaulting Party shall first notify the other Party in writing of the purported breach, failure, or act above described, giving the non-defaulting Party sixty (60) days from receipt of such notice to cure or, if such cure cannot be accomplished within sixty (60) days, to commence to cure such breach, failure, or act. In the event the non-defaulting Party fails to cure within said sixty (60) days, or, if the breach or failure is of such a nature that it cannot be cured within sixty (60) days, the non-defaulting Party fails to commence to cure within such sixty (60) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the non-defaulting Party shall be afforded the remedies described in Section 6.4 below.

Notwithstanding the notice and cure periods set forth above, if a lesser cure period or notice requirement is allowed before a default occurs under any other County Document, such periods shall control in this Agreement as well.

Section 6.4 Remedies for Default.

County and Developer acknowledge that the purpose of this Agreement is to carry out the Parties' objectives as set forth in the recitals. County and Developer agree that to determine a sum of money which would adequately compensate either Party for choices they have made which would be foreclosed should the Property not be developed as contemplated by this Agreement is not possible and that damages would not be an adequate remedy. Therefore, County and Developer agree that in the event of a breach or Default under this Agreement, monetary damages shall not be awarded to either Party. This exclusion on damages is limited to a breach of this Agreement. County and Developer further agree that, in the event of a Default or breach under this Agreement, following the expiration of the notice and cure periods described in Section 6.3, the only remedies available to the non-breaching Party shall be those listed in this Section 6.4, as follows:

(a) Action for Specific Performance. Upon a Default, the non-defaulting Party may prosecute an action for specific performance.

(b) Termination of this Agreement. Upon a Default, the non-defaulting Party may terminate this Agreement by written notice to the defaulting Party, provided, however, that the remedies pursuant to this Article 6 or any other County Document and the indemnification provisions of this Agreement shall survive such termination.

Section 6.5 Waiver of Lis Pendens.

It is expressly understood and agreed by the Parties that no lis pendens shall be filed against any portion of the Property with respect to this Agreement or any dispute or act arising from it.

Section 6.6 Remedies Cumulative.

No right, power, or remedy given by the terms of this Agreement or the County Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise. Neither the failure nor any delay to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 6.7 Waiver of Terms and Conditions.

No waiver of any Default or breach by the Developer hereunder shall be implied from any omission by the County to take action on account of such Default if such Default persists or is repeated, and no express waiver shall affect any Default other than the Default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the County to, or of, any act by the Developer requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any Default under this Agreement or the applicable County Documents, nor shall it invalidate any act done pursuant to notice of Default, or prejudice the County in the exercise of any right, power, or remedy hereunder or under the applicable County Documents, unless in the exercise of any such right, power, or remedy all obligations of the Developer to the County under the applicable County Documents are paid and discharged in full.

ARTICLE 7.
GENERAL PROVISIONS

Section 7.1 Notices, Demands and Communications.

Formal notices, demands, and communications between the County and the Developer shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by facsimile with a copy

delivered the following day by reputable overnight delivery service, or delivered personally, to the principal office of the Parties as follows:

County: County of Napa
County Administration Building
1195 Third Street, Suite 310
Napa, CA 94559
Attention: Housing and Intergovernmental Affairs Director

With copy to: County of Napa
County Administration Building
1195 Third Street, Suite 310
Napa, CA 94559
Attention: County Counsel

Developer: Idaho Pacific West Communities, Inc. .
430 E. State Street, Suite 100
Eagle, ID 83616
Attention: Caleb Roope

With copy to: Napa Pacific Associates, a California Limited Partnership
430 E. State Street, Suite 100
Eagle, ID 83616
Attention: Caleb Roope

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section 7.1. Telephone numbers are only provided for the Parties' convenience, and formal notices may not be transmitted by telephone. In addition, any notice or demand from the County to the Developer may be delivered by e-mail to the Developer's e-mail set forth above; provided, however, in no event shall the Developer deliver any formal notice or demand to the County by e-mail.

Section 7.2 Forced Delay.

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in Default only if such delay or Default is due solely to: war; insurrection; riots; floods; earthquakes; fires; casualties; acts of terrorism or the public enemy; or severe and unanticipated weather conditions. An extension of time for cause will be deemed granted if notice by the Party claiming such extension is sent to the other Party within ten (10) days from the date the Party seeking the extension first discovered the cause and such extension of time is not rejected in writing by the other Party within ten (10) days after receipt of the notice. In no event shall the cumulative delays exceed one hundred eighty (180) days, unless otherwise agreed to by the Parties in writing. Notwithstanding this Section, the Term may not be extended except by amendment approved by the Board of Supervisors.

Section 7.3 General Indemnification.

To the full extent permitted by law, the Developer shall indemnify, defend at its own expense, and hold the County and its elected officials, officers, employees and agents in their official capacity (collectively "Indemnitees") harmless against any and all claims, suits, actions,

losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to the purchase of the Property, development, construction, marketing and operation of the Development, except to the extent such claim arises from the grossly negligent or willful misconduct of the County or Indemnitees. Each Party shall notify the other Party immediately in writing of any claim or damage related to activities performed under this Agreement. The Parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under the attorney-client privilege or attorney work product privilege. The provisions of this Section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 7.4 No Commissions.

The County shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement. The County represents that it has engaged no broker, agent or finder in connection with this transaction, and the Developer shall defend and hold the County harmless from any claims by any broker, agent or finder retained by the Developer. The provisions of this Section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 7.5 Binding Upon Successors.

(a) This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto except that there shall be no Transfer of any interest by the Developer except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired an interest in compliance with the terms of this Agreement, or under law.

(b) The covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property. Each and every contract, deed, or other instrument hereafter executed covering or conveying any interest in the Property shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed, or other instrument, unless the County expressly releases the Property from the requirements of this Agreement.

Section 7.6 Relationship of Parties.

Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the County and the Developer or its agents, employees or contractors, and the Developer shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. The Developer has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. In regards to the acquisition, construction, and operation of the Development, the Developer shall be solely responsible for all matters relating to payment of its employees,

including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. The Developer shall be solely responsible for its own acts and those of its agents and employees.

Section 7.7 Parties Not Co-Venturers.

Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 7.8 No Claims.

Nothing contained in this Agreement shall create or justify any claim against the County by any person that the Developer may have employed or with whom the Developer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the purchase of the Property, the construction or operation of the Development, and the Developer shall include similar requirements in any contracts entered into for the construction or operation of the Development.

Section 7.9 Non-Liability of County Officials, Employees and Agents.

No member, official, employee or agent of the County shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by the County or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

Section 7.10 No Third Party Beneficiaries.

This Agreement and the County Documents are made and entered into solely for the benefit of the County and the Developer and no other person shall have any right of action under or by reason of this Agreement or the County Documents.

Section 7.11 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in subsection (b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. The Developer shall exercise due diligence to ensure that the prohibition in this Section is followed.

(b) The conflict of interest provisions of subsection (a) above apply to any person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of the County, or any person related within the third (3rd) degree of such person.

(c) In accordance with Government Code Section 1090 and the Political Reform Act, Government Code Section 87100 et seq., no person who is a director, officer,

partner, trustee or employee or consultant of the Developer, or immediate family member of any of the preceding, shall make or participate in a decision, made by the County or a County board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or the Developer. Interpretation of this Section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code Section 87100 et seq., its implementing regulations manual and codes, and Government Code Section 1090.

Section 7.12 Amendments.

No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties. The Chair is authorized to execute on behalf of the County amendments to the Loan Documents or amended and restated Loan Documents so long as the Board first approves any material change in the amount or terms of this Agreement or in the amounts or terms of financing provided by other parties for the Development, requiring conforming amendments to the Loan Documents. Developer shall pay the Modification Fee to the County if Developer requests amendments or modifications to the Loan or any Loan Documents.

Section 7.13 Action by the County.

Except as may be otherwise specifically provided in this Agreement or another applicable County Document, whenever any approval, notice, direction, finding, consent, request, or other action by the County is required or permitted under this Agreement, including, but not limited to, any approval of a proposed Transfer pursuant to Article 5, such action may be given, made, or taken by the County Administrator, without further approval by the Board of Supervisors. Any such action shall be in writing. .

Section 7.14 Conflict among County Documents.

Unless otherwise provided in a particular County Document, in the event of a conflict between the terms of this Agreement and any other County Document, the most restrictive requirements shall apply.

Section 7.15 Representation and Warranties of Developer.

The Developer hereby represents and warrants to the County as follows:

(a) Organization. The Developer is a duly organized, validly existing Idaho corporation, and is in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Developer. The Developer has full power and authority to execute and deliver this Agreement, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under the Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments

executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Developer enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on the Developer, or any provision of the organizational documents of the Developer, or will conflict with or constitute a breach of or a default under any agreement to which the Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of the Developer, other than liens established pursuant hereto.

(f) Compliance With Laws; Consents and Approvals. The construction of the Development will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. The Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Developer, threatened against or affecting the Developer, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Developer, materially affect the Developer's ability to develop the Development.

(h) Title to Property. Upon sale of the Property, the Developer will have good and marketable title to the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens approved by the County, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the County or approved in writing by the County.

(i) Financial Statements. The financial statements of the Developer, and other financial data and information furnished by, or on behalf of the Developer, to the County Parties fairly present the information contained therein. As of the Effective Date, there has not been any adverse, material change in the financial condition of the Developer from that shown by such financial statements and other data and information.

(j) Sufficient Funds. Upon the acquisition of the Property the Developer will hold sufficient funds or binding commitments for sufficient funds to obtain the Property, and complete the construction of the Development in accordance with this Agreement

Section 7.16 Entry by the County.

The Developer shall permit the County, through its officers, agents, or employees, at all reasonable times to enter into the Development (a) to inspect the work of construction to determine that the same is in conformity with the requirements of this Agreement, and (b) following completion of construction, to inspect the ongoing operation and management of the Development to determine that the same is in conformance with the requirements of this Agreement. The Developer acknowledges that the County is under no obligation to supervise, inspect, or inform the Developer of the progress of construction, or operations and the Developer shall not rely upon the County therefor. Any inspection by the County during the construction is entirely for its purposes in determining whether the Developer is in compliance with this Agreement and is not for the purpose of determining or informing the Developer of the quality or suitability of construction. The Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers.

Section 7.17 Entire Understanding of the Parties.

This Agreement, in conjunction with the County Documents, constitutes the entire understanding and agreement of the Parties with respect to the conveyance of the Property, and the construction of the Development. The Parties further intend that this Agreement constitute the final and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceedings involving this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. The Parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including but not limited to Civil Code Section 1654 as may be amended from time to time) shall not apply to the interpretation of this Agreement.

Section 7.18 Severability.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 7.19 Legal Actions.

Any legal action commenced to interpret or to enforce the terms of this Agreement shall be filed in the Napa County Superior Court.

Section 7.20 Applicable Law.

This Agreement shall be interpreted under and pursuant to the laws of the State of California without regard to choice of law principles.

Section 7.21 Inspection of Books and Records.

Upon request, the Developer shall permit the County to inspect at reasonable times and on a confidential basis those books, records and all other documents of the Developer necessary to determine Developer's compliance with the terms of this Agreement.

Section 7.22 Title of Parts and Sections.

Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

Section 7.23 Time of the Essence.

In all matters under this Agreement, the Parties agree that time is of the essence.

Section 7.24 Counterparts; Multiple Originals.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

Remainder of Page Left Intentionally Blank

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Developer:

IDAHO PACIFIC WEST COMMUNITIES, INC.,
an Idaho corporation

By: _____
_____, President

County:

COUNTY OF NAPA, a political subdivision of
the State of California

By: _____
Chair, Board of Supervisors

ATTEST:

By: _____
County Clerk

APPROVED AS TO FORM:

County Counsel

Note: Section 4.5 requires the Developer's initials

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The land referred to in this report is situated in the County of Napa, State of California, and is described as follows:

BEING a portion of the parcel of land described as "Parcel One" in both the Deed to George J. Calhoun, et ux recorded July 11, 1977 in Book 1043 at page 890 of Official Records of Napa County and the Deed to Theodore G. Bell, et ux, recorded July 27, 1956 in Book 518 at page 310 of Official Records of Napa County, and a portion of the parcel of land described in the Deed to the City of Napa, recorded August 11, 1948 in Book 295 at page 237 of Official Records of Napa County, more particularly described as follows:

Commencing on the Western line of said "Parcel One" at the Southwestern corner of the parcel of land described in the Deed to the City of Napa, recorded September 15, 1977 in Book 1051 at page 816 of Official Records of Napa County; thence South 81° 45' East along the Southern line of said City of Napa parcel 297.65 feet to the Southeastern corner thereof on the Eastern line of said "Parcel One"; thence South 00° 24' East along said Eastern line and the Southern prolongation thereof, 136.93 feet; thence North 89° 59' West along a line parallel with and 17.61 feet distant measured at right angles Southerly from the Southern line of said Calhoun parcel, 295.84 feet to the Southern prolongation of the Western line of said parcel; thence North 00° 06' East along said prolongation to and along said Western line, 179.54 feet to the point of commencement.

APN 046-011-017; -018

EXHIBIT B
FINANCING PROPOSAL

EXHIBIT C

FORM OF GRANT DEED

Recording Requested by:

County of Napa
County Administration Building
1195 Third Street, Suite 310
Napa, CA 94559
Attention: Housing and Intergovernmental Affairs Director

After Recordation Mail to and
Mail Tax Statements to:

Idaho Pacific West Communities, Inc.
430 E. State Street, Suite 100
Eagle, ID 83616

SPACE ABOVE THIS LINE FOR RECORDER'S USE

THE UNDERSIGNED GRANTOR(S) DECLARE(S):

Documentary Transfer Tax is \$_____

GRANT DEED

FOR VALUE RECEIVED, the receipt and sufficiency of which are hereby acknowledged, the **COUNTY OF NAPA**, a political subdivision of the State of California, hereby grants to **IDAHO PACIFIC WEST COMMUNITIES, INC.**, an Idaho corporation, all of that certain real property more particularly described in Schedule 1 attached hereto and incorporated herein by this reference, subject to (a) all non-delinquent real property taxes, (b) all non-delinquent special assessments, if any, (c) all other liens, leases, easements, encumbrances, covenants, conditions, restrictions and other matters of record, and (d) all matters affecting the status of title that would be revealed by an accurate survey of the subject property.

Grantor disclaims any and all express or implied warranties regarding the Property other than the implied warranties stated in Section 1113 of the California Civil Code.

Dated: _____, 2016

COUNTY OF NAPA, a political subdivision of the State of California

By: _____

Its: Chair, Napa County Board of Supervisors

C-1

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Notary Public

ATTACHMENT "1"

LEGAL DESCRIPTION

The land referred to in this report is situated in the County of Napa, State of California, and is described as follows:

BEING a portion of the parcel of land described as "Parcel One" in both the Deed to George J. Calhoun, et ux recorded July 11, 1977 in Book 1043 at page 890 of Official Records of Napa County and the Deed to Theodore G. Bell, et ux, recorded July 27, 1956 in Book 518 at page 310 of Official Records of Napa County, and a portion of the parcel of land described in the Deed to the City of Napa, recorded August 11, 1948 in Book 295 at page 237 of Official Records of Napa County, more particularly described as follows:

Commencing on the Western line of said "Parcel One" at the Southwestern corner of the parcel of land described in the Deed to the City of Napa, recorded September 15, 1977 in Book 1051 at page 816 of Official Records of Napa County; thence South 81° 45' East along the Southern line of said City of Napa parcel 297.65 feet to the Southeastern corner thereof on the Eastern line of said "Parcel One"; thence South 00° 24' East along said Eastern line and the Southern prolongation thereof, 136.93 feet; thence North 89° 59' West along a line parallel with and 17.61 feet distant measured at right angles Southerly from the Southern line of said Calhoun parcel, 295.84 feet to the Southern prolongation of the Western line of said parcel; thence North 00° 06' East along said prolongation to and along said Western line, 179.54 feet to the point of commencement.

APN 046-011-017; -018

EXHIBIT D

FORM OF REGULATORY AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

County of Napa
County Administration Building
1195 Third Street, Suite 310
Napa, CA 94559
Attention: Housing and Intergovernmental Affairs Director

No fee for recording pursuant to
Government Code Section 27383

AFFORDABLE HOUSING FUND REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

Napa Courtyards

This Affordable Housing Fund Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of _____, 201_, by and between the County of Napa, a political subdivision of the State of California ("County"), and Idaho Pacific West Communities, Inc., an Idaho corporation ("Developer"), with reference to the following facts.

RECITALS

A. The County and Developer have entered into an Affordable Housing Fund Loan Agreement of even date herewith, (the "Loan Agreement"), pursuant to which the County will provide a loan (the "Loan") to the Developer in the amount of _____ Dollars (\$_____) for acquisition, construction, and permanent financing for an affordable housing project on certain property located in the City of Napa (the "City"), County of Napa, as more particularly described in Exhibit A attached hereto (the "Property"). The Developer intends to construct an approximately twenty (20) unit housing development on the Property, of which the County will restrict nine (9) units as Very Low Income Units and the remainder of the Units (other than one (1) Manager's Unit) as Other Income Units for a fifty-five (55) year period (the "Development", as further defined below. This Agreement, in conjunction with any other regulatory agreements between the Developer and providers of the Approved Financing, will ensure the Development's continuing affordability. Capitalized terms used but not defined in this Agreement shall have the meanings set forth in the Loan Agreement.

B. The funds loaned to Developer pursuant to the Loan Agreement are from the County's Affordable Housing Fund, created by the County for the purpose of increasing and preserving the supply of housing affordable to moderate, low, and very low income households in the County. Pursuant to Chapter 18.107 of the Napa County Code, the County must restrict developments assisted with funds from the County's Affordable Housing Fund to ensure that the developments remain affordable over time. This Agreement is intended to implement this requirement of the Napa County Code.

C. The Loan is being made to the Developer at an interest rate below the market rate in order to help achieve financial stability for the Development and to increase the supply of affordable rental housing in the County. In consideration for the Loan, the Developer has agreed to observe all the terms and conditions set forth below.

D. On March 1, 2016 the County's Board of Supervisors (the "Board") adopted Resolution No. 2016-___, authorizing the Loan on certain terms and conditions and further authorizing the Chair of the Board (the "Chair") to execute all necessary loan documents to effect the Loan and all related loan documents as required for ongoing future maintenance and monitoring responsibilities, as approved by County Counsel.

THEREFORE, the County and the Developer hereby agree as follows.

AGREEMENT

The foregoing recitals are hereby incorporated by reference and made part of this Agreement.

ARTICLE 1 **DEFINITIONS**

1.1 Definitions.

When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

(a) "Actual Household Size" is the actual number of persons in the applicable household.

(b) "Agreement" is this Affordable Housing Fund Regulatory Agreement and Declaration of Restrictive Covenants.

(c) "Area Median Income" or "AMI" is the area median income for Napa County as published and periodically updated by the United States Department of Housing and Urban Development ("HUD"),, adjusted for Actual Household Size or Assumed Household Size as specified in this Agreement.

(d) "Assumed Household Size" shall have the meaning set forth in Section 2.2(d) below.

(e) "Board" is defined in Recital D.

(f) "Chair" is defined in Recital D.

(g) "City" is defined in Recital A.

(h) "County" is as defined in the first paragraph of this Agreement.

(i) "Deed of Trust" is the deed of trust to the County on the Property that secures repayment of the Loan and the performance of all covenants of the Loan Documents.

(j) "Developer" is as defined in the first paragraph of this Agreement.

(k) "Development" is the Property and the approximately twenty (20) rental housing units to be located on the Property as described in Recital A, as well as any additional improvements, and all landscaping, roads and parking spaces existing thereon, as the same may from time to time exist.

(l) "HUD" is the United States Department of Housing and Urban Development.

(m) "Loan" is as defined in Recital A.

(n) "Loan Agreement" is defined in Recital A.

(o) "Low Income Household" shall mean a household with an annual income which does not exceed sixty percent (60%) of Area Median Income, adjusted for Actual Household Size.

(p) "Low Income Rent" shall mean the maximum allowable rent for a Unit occupied by a Low Income Household pursuant to Section 2.3(a) below.

(q) "Note" is the promissory note from the Developer to the County evidencing the Loan.

(r) "Other Income Household" shall mean a household with an annual income which does not exceed ninety percent (90%) of Area Median Income, adjusted for Actual Household Size.

(s) "Other Income Rent" shall mean the maximum allowable rent for an Other Income Unit pursuant to Section 2.2(c) below.

(t) "Other Income Units" shall mean the Units which, pursuant to Section 2.1(c) below, are required to be occupied by Other Income Households.

(u) "Property" is defined in Recital A. "Rent" is the total of monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by the Developer which are required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the Developer, and paid by the Tenant.

(v) "Tenant" is a household legally occupying a Unit pursuant to a valid lease with Developer.

(w) "Term" shall mean the term of this Agreement, which shall commence on the date of this Agreement and shall continue until the fifty-fifth (55th) anniversary of the date of

issuance of the last certificate of occupancy or equivalent certification provided by the Building Division of the City's Community Development Department for the Units.

(x) "Unit" is one of the approximately twenty (20) rental housing units constructed on the Property.

(y) "Very Low Income Household" shall mean a household with an annual income which does not exceed fifty percent (50%) of Area Median Income, adjusted for Actual Household Size.

(z) "Very Low Income Rent" shall mean the maximum allowable Rent for a Very Low Income Unit pursuant to Section 2.2(a) below.

(aa) "Very Low Income Units" shall mean the Units which, pursuant to Section 2.1(a) below, are required to be occupied by Very Low Income Households.

1.2 Exhibits.

The following exhibit is attached to this Agreement and incorporated into this Agreement by this reference:

EXHIBIT A: Legal Description of the Property

ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

2.1 Occupancy Requirements.

The Units listed below shall be occupied by Tenants meeting the following income requirements:

(a) Very Low Income Units. Nine (9) of the Units in the Development, including ___ one-bedroom Unit, ___ two-bedroom Units, and ___ three-bedroom Units (collectively, the "Very Low Income Units") shall be rented to and occupied by or, if vacant, available for occupancy by Very Low Income Households.

(b) Other Income Units. The remaining ten (10) Units in the Development shall be rented to and occupied by or, if vacant, available for occupancy by Other Income Households.

(c) Intermingling of Units. The Very Low Income Units shall be intermingled with, and shall be of comparable quality to, the Other Income Units in the Development.

2.2 Allowable Rent.

(a) Very Low Income Rent. Subject to the provisions of Section 2.3 below, the maximum Rent (including utility allowance) charged to Tenants of the Very Low Income Units shall not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income, adjusted for Assumed Household Size.

(b) Other Income Rent. Subject to the provisions of Section 2.3 below, the Rent (including utility allowance) paid by Tenants of the Other Income Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of ninety percent (90%) of Area Median Income, adjusted for Assumed Household Size.

(c) Assumed Household Size. In calculating the allowable Rent for the Units, the following Assumed Household Sizes shall be utilized (except that if any federal statutes or regulations require use of alternate household size assumptions in calculating rents, such federally-mandated household size assumptions shall be used instead of the assumptions provided below):

<u>Number of Bedrooms</u>	<u>Assumed Household Size</u>
One	2
Two	3
Three	4

(d) County Approval of Rents. Initial rents for all Units shall be approved by the County prior to occupancy. All rent increases shall also be subject to County approval. The County shall provide the Developer with a schedule of maximum permissible rents for the Units annually. The Developer shall not charge any fee other than Rent to any Tenant of Units for any housing or other services provided by Developer.

(e) In the event that income determinations are no longer published by HUD, or are not updated for a period of at least eighteen (18) months, the County shall provide the Developer with other income and Rent determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD.

2.3 Increased Income of Tenants.

(a) Increase from Very Low Income to at or below Low Income. If, upon recertification of a Tenant's income, the Developer determines that a former Very Low Income Household's income has increased and exceeds the qualifying income for a Very Low Income Household, but does not exceed the qualifying limit for a Low Income Household, then, upon expiration of the Tenant's lease:

(1) Such Tenant's Rent may be increased to one-twelfth (1/12th) of thirty percent (30%) of sixty percent (60%) of Area Median Income, adjusted for Assumed Household Size, upon ninety (90) days written notice to the Tenant; and

(2) The Developer shall rent the next available Unit to a Very Low Income Household at a Rent not exceeding the maximum Rent specified in Section 2.2(a).

(b) Increase from Very Low Income to at or below Other Income. If, upon recertification of a Tenant's income, the Developer determines that a former Very Low Income Household's income has increased and exceeds the qualifying income for a Low Income Household, but does not exceed the qualifying limit for an Other Income Household, then, upon expiration of the Tenant's lease:

(1) Such Tenant's Rent may be increased to an Other Income Rent, upon ninety (90) days written notice to the Tenant; and

(2) The Developer shall rent the next available Unit to a Very Low Income Household at a Rent not exceeding the maximum Rent specified in Section 2.2(a).

(c) Increase from Very Low Income and Other Income to at or below One Hundred Twenty Percent (120%) of Area Median Income. If, upon recertification of a Tenant's income, the Developer determines that a former Very Low Income Household's or Other Income Household's income has increased and exceeds the qualifying income for an Other Income Household, but does not exceed one hundred twenty percent (120%) of Area Median Income adjusted for Actual Household Size, then, upon expiration of the Tenant's lease:

(1) Such Tenant's Rent may be increased to one-twelfth (1/12th) of thirty percent (30%) of one hundred ten percent (110%) of Area Median Income, adjusted for Assumed Household Size, upon ninety (90) days written notice to the Tenant; and

(2) The Developer shall rent the next available Unit to a Very Low Income Household or an Other Income Household as applicable at a Rent not exceeding the maximum Rent specified in Section 2.2(a) or 2.2(b), as applicable.

(d) Non-Qualifying Household. If, upon recertification of a Tenant's income, the Developer determines that a Tenant has an income exceeding one hundred twenty percent (120%) of Area Median Income, adjusted for Actual Household Size, such Tenant shall be permitted to continue to occupy the Unit and such Tenant's Rent may be increased to one-twelfth of thirty percent (30%) of the household's actual income, adjusted for Assumed Household Size, upon ninety (90) days written notice to the Tenant, and the Developer shall rent the next available Unit to a Very Low Income Household or Other Income Household as applicable, at a Rent not exceeding the maximum Rent specified in Section 2.2(a) or 2.2(b), as applicable.

2.4 Termination of Occupancy.

Upon termination of occupancy of an Unit by a Tenant, such Unit shall be deemed to be continuously occupied by a household of the same income level (e.g., Very Low Income Household or Other Income Household) as the initial income level of the vacating Tenant, until such Unit is reoccupied, at which time the income character of the Unit (e.g., Very Low Income Unit or Other Income Unit) shall be redetermined. In any event, Developer shall maintain the occupancy requirements set forth in Section 2.1 above, except as may be modified by Section 2.3.

2.5 Section 8 Voucher and Certificate Holders.

The Developer will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing certificate program or the Housing Choice Voucher Program under Section 8 of the United States Housing Act, or its successor. The Developer shall not apply selection criteria to Section 8 certificate or voucher holders that is more burdensome than criteria applied to all

other prospective Tenants, nor shall the Developer apply or permit the application of management policies or lease provisions with respect to the Units which have the effect of precluding occupancy of Units by such prospective Tenants.

2.6 Lease Provisions.

The Developer shall use a form of Tenant lease approved by the County for the Units. The form of Tenant lease shall also comply with all requirements of the Loan Documents, and shall, among other matters:

(a) provide for termination of the lease and consent by the Tenant to immediate eviction for failure: (1) to provide any information required under this Agreement or reasonably requested by the Developer to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy of the Units in accordance with the standards set forth in this Agreement, or (2) to qualify as a Very Low Income Household or Other Income Household, as the case may be, as a result of any material misrepresentation made by such Tenant with respect to the income computation or certification;

(b) be for an initial term of not less than one (1) year. After the initial year of tenancy, the lease may be month to month by mutual agreement of the Developer and the Tenant, however the Rent may not be raised more often than once every twelve (12) months after such initial year. The Developer will provide each Tenant with at least sixty (60) days' written notice of any increase in Rent applicable to such Tenant, and with such further notice as may be required by Section 2.3 above;

(c) prohibit subleasing of the Unit, contain nondiscrimination provisions, and include the Tenant's obligation to inform the Developer of any need for maintenance or repair;

(d) include reasonable rules of conduct consistent with California law; and

(e) allow termination of the tenancy only for good cause, including serious or repeated violation of the terms and conditions of the rental agreement, violations of applicable federal, state, or local law; or other good cause.

2.7 Security Deposits.

Any security deposits collected by Developer or Developer's agent shall be kept separate and apart from all other funds in a trust account with a depository insured by the Federal Deposit Insurance Corporation or other comparable federal deposit insurance program and shall be held and disbursed in accordance with California law. The balance in the trust account shall at all times equal or exceed the aggregate of all outstanding obligations, plus accrued interest thereon.

ARTICLE 3

INCOME CERTIFICATION AND REPORTING

3.1 Tenant Selection Plan.

(a) Marketing Plan. Ninety (90) days before leasing the Development, the Developer shall provide the County, for its review and approval, the Developer's written tenant selection and affirmative marketing plan consistent with subsection (b) below. Upon receipt of the marketing plan, the County shall promptly review the marketing plan and shall approve or disapprove it within thirty (30) days after submission. If the marketing plan is not approved, the Developer shall submit a revised marketing plan within thirty (30) days. The Developer's marketing materials shall identify the County as a source of funding for the Units.

(b) Local Worker Preference. To the extent consistent with the requirements of other funding sources and state and federal law, households with a member who is employed within ten (10) miles of the Development, farmworkers, and households with a member who is employed in Napa County shall be given preference for occupancy of the Units.

3.2 Income Certification.

The Developer will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications for each Tenant renting any of the Units. Developer shall make a good faith effort to verify that the income statement provided by an applicant or Tenant is accurate by taking two or more of the following steps as a part of the verification process: (a) obtain a minimum of the three (3) most current pay stubs for all adults age eighteen (18) or older; (b) obtain an income tax return for the most recent tax year; (iii) conduct a credit agency or similar search; (c) obtain the three (3) most current savings and checking account bank statements; (d) obtain an income verification form from the applicant's current employer; (e) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (f) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of Tenant income certifications shall be made available to the County upon request.

3.3 Annual Report to County.

(a) The Developer shall provide any information reasonably requested by the County in connection with the Development. In particular, the Developer shall provide the County with annual reports required by this Regulatory Agreement, including but not limited to reports regarding the Development's rent and occupancy levels, as well as the annual operating budget. Without limitation, the Developer shall provide the County no later than the sixtieth (60th) day after the close of each calendar year following the Effective Date, hardcopies and PDF copies of the following documents:

(1) insurance certificates detailing all coverage required under the Loan Agreement and the Deed of Trust;

(2) evidence of payment of property taxes or property tax exemption for the Development, as applicable;

(3) audited financial statements for the Development;

(4) an occupancy report including: (i) the verified income of each tenant or household, (ii) the number of tenants in each household; (iii) the current rents charged each tenant or household and whether these rents include utilities, (iv) the date tenancy commenced for each Unit, and (v) the percentage of Units occupied by farmworker households, persons employed within ten (10) miles of the Development, and persons employed within Napa County;

(5) certifications of eligibility for all Tenants of Units at the time of initial occupancy and upon the yearly anniversary of their continuing tenancies. Such certification shall include verified income statements. Developer shall retain in the Tenant's file all verifications of Tenant's income (tax returns, W-2 forms, paycheck stubs, etc.);

(6) a management report detailing the activities of the management agent;

(7) audited financial statements for the Developer's general partner(s), limited partner(s), and, if applicable, sponsor;

(8) A list of any substantial physical defects in the Units, including a description of any major repair or maintenance work undertaken or needed in the previous year and measures taken to maintain the Units in a safe and sanitary condition in accordance with applicable codes;

(9) the operating reserve balance;

(10) the replacement reserve balance;

(11) the proposed annual operating budget for the subsequent fiscal year; and

(12) the proposed annual replacement budget for the subsequent fiscal year.

(b) Within fifteen (15) days after receipt of a written request, Developer shall provide any other information or completed forms requested by the County to ensure compliance with the Loan Documents or this Agreement.

(c) Substitution of Monitoring and Compliance Reports Prepared for Other Financing Programs. If similar reports on some or all of the Units are required for regulatory compliance with other financing programs, those reports may be deemed satisfactory for the purpose of this Section by the County, with respect to the portion of the requirements of this Section covered by such reports, provided that copies are provided on an annual basis to the County with an owner certification addressed to the County certifying that the Developer has complied with this Agreement.

3.4 Additional Information.

The Developer shall provide any additional information reasonably requested by the County. The County shall have the right to examine and make copies of all books, records or other documents of the Developer which pertain to the Units.

3.5 Records.

(a) The Developer shall maintain complete, accurate and current records pertaining to the Units, and shall permit any duly authorized representative of the County to inspect records, including but not limited to records pertaining to income and household size of Tenants and Rent charged Tenants, upon reasonable prior notice during normal business hours. All Tenant lists, applications and waiting lists relating to the Units shall at all times be kept separate and identifiable from any other business of the Developer and shall be maintained as required by the County, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the County. The Developer shall retain copies of all

3.6 On-site Inspection.

(a) The County shall have the right to perform on-site inspections of the Development, including the materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years.

(b) The County shall notify Developer of any records it deems insufficient. Developer shall have fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the County in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Developer shall begin to correct the deficiency within fifteen (15) days and correct the deficiency within thirty (30) days, or as otherwise agreed by County if a longer time period is reasonably required. Units, as is reasonably required to ensure compliance with the Loan Documents, but in any case at least once per year. The Developer agrees to cooperate in such inspection(s). If County desires to inspect the interior of the Units, County shall give Developer sufficient notice to allow Developer to give seventy-two (72) hours' notice to Tenants.

ARTICLE 4

OPERATION OF THE DEVELOPMENT

4.1 Residential Use.

The Property and the Units shall be used only for residential purposes consistent with the Loan Documents, and the Units shall be operated and maintained as residences for the Term of this Agreement. No part of the Units shall be operated as transient housing in which the term of occupancy is less than thirty (30) days.

4.2 Compliance with Loan Documents.

Developer shall comply with all the terms and provisions of the Loan Documents.

4.3 Taxes and Assessments.

Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any line or charge from attaching to the Property; provided, however, that Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Developer exercises its right to contest any tax, assessment, or charge against it, Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

4.4 Compliance with County Underwriting Guidelines.

The Developer shall develop and operate the Development in compliance with the County's Multifamily Rental Housing Transaction Underwriting Guidelines.

ARTICLE 5

PROPERTY MANAGEMENT AND MAINTENANCE

5.1 Management Responsibilities.

The Developer is responsible for all management functions with respect to the Units, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The County shall have no responsibility over management of the Units. The Developer shall retain a professional property management company approved by the County in its reasonable discretion to perform its management duties hereunder. A resident manager shall also be required at all times.

5.2 Management.

The Development shall at all times be managed by an experienced management agent reasonably acceptable to the County, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). The Developer shall submit for the County's approval the identity of any proposed Management Agent. The Developer shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably necessary for the County to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, the County shall approve the proposed Management Agent by notifying the Developer in writing. Unless the proposed Management Agent is disapproved by the County within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. The County hereby approves ____ as the initial Management Agent.

5.3 Performance Review.

The County reserves the right to conduct an annual (or more frequently, if deemed necessary by the County) review of the management practices and financial status of the Development. The purpose of each periodic review will be to enable the County to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. The Developer shall cooperate with the County in such reviews.

5.4 Replacement of Management Agent.

If, as a result of a periodic review, the County determines in its reasonable judgment that the Development is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the County shall deliver notice to Developer of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days of receipt by Developer of such written notice, County staff and the Developer shall meet in good faith to consider methods for improving the financial and operating status of the Development, including, without limitation, replacement of the Management Agent.

If, after such meeting, County staff recommends in writing the replacement of the Management Agent, Developer shall promptly dismiss the then Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in Section 5.2 above and approved by the County pursuant to Section 5.2 above.

Any contract for the operation or management of the Development entered into by Developer shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute Default under this Agreement, and the County may enforce this provision through legal proceedings as specified in Section 6.8 below.

5.5 Approval of Management Policies.

The Developer shall submit its written management policies with respect to the Units to the County for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

5.6 Property Maintenance.

(a) The Developer agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, and in accordance with the following maintenance conditions:

(1) Landscaping. The Developer agrees to have landscape maintenance performed every other week, including replacement of dead or diseased plants with comparable plants. Developer agrees to adequately water the landscaping on the

Property. No improperly maintained landscaping on the Property shall be visible from public streets and/or rights of way.

(2) Yard Area. No yard areas on the Property shall be left unmaintained, including:

(A) broken or discarded furniture, appliances and other, household equipment stored in yard areas for a period exceeding one (1) week;

(B) packing boxes, lumber trash, dirt and other debris in areas visible from public property or neighboring properties; and

(C) vehicles parked or stored in other than approved parking areas.

(3) Building. No buildings located on the Property may be left in an unmaintained condition so that any of the following exist:

(A) violations of state law, uniform codes, or City ordinances;

(B) conditions that constitute an unsightly appearance that detracts from the aesthetics or value of the Property or constitutes a private or public nuisance;

(C) broken windows;

(D) graffiti (must be removed within 72 hours); and

(E) conditions constituting hazards and/or inviting trespassers, or malicious mischief.

(4) Sidewalks. The Developer shall maintain, repair, and replace as necessary all public sidewalks adjacent to the Development.

(b) The County places prime importance on quality maintenance to protect its investment and to ensure that all County-assisted affordable housing projects within the County are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Units will be acceptable to the County assuming the Developer agrees to provide all necessary improvements to assure the Units are maintained in good condition. The Developer shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

(c) In the event that the Developer breaches any of the covenants contained in this Section and such Default continues for a period of ten (10) days after written notice from the County with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the County with respect to landscaping and building improvements, then the County, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the Default. Pursuant to such right of entry, the County shall be permitted (but is not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by

the County and/or costs of such cure, which amount shall be promptly paid by the Developer to the County upon demand.

5.7 Safety Conditions.

(a) The Developer acknowledges that the County places a prime importance on the security of County assisted projects and the safety of the residents and surrounding community. The Developer agrees to implement and maintain throughout the Term the following security measures in the Development:

(1) to the extent feasible employ defensible space design principles and crime prevention measures in the operation of the Development including but not limited to maintaining adequate lighting in parking areas and pathways;

(2) use its best efforts to work with the City Police Department to implement and operate an effective neighborhood watch program; and

(3) provide added security including dead-bolt locks for every entry door, and where entry doors are damaged, replace them with solid-core doors.

(b) The County shall have the right to enter on the Property and/or contact the City Police Department if it becomes aware of or is notified of any conditions that pose a danger to the peace, health, welfare or safety of the Tenants and/or the surrounding community, and to perform or cause to be performed such acts as are necessary to correct the condition.

ARTICLE 6 **MISCELLANEOUS**

6.1 Nondiscrimination.

(a) Developer herein covenants by and for itself, its subcontractors, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, nor denial of the benefits of this Agreement to, any person or group of persons, on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability or medical condition (including cancer, HIV and AIDS) or political affiliation or belief, nor any unlawful discrimination against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. Developer shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, Developer shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such

statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to Developer services or works required of County by the State of California pursuant to agreement between County and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and Developer and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) The provisions of paragraph (a) shall further apply to the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Development, and Developer and any person claiming under or through the Developer, shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the Development.

(c) Notwithstanding paragraph (a), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(d) The Developer shall include the provisions contained in this Section in all contracts and subcontracts related to the Development.

(e) The requirements in this Section shall survive the repayment of the Loan, and the reconveyance of the Deed of Trust.

6.2 Term.

The provisions of this Agreement shall apply to the Property for the entire Term even if the Loan is paid in full prior to the end of the Term. This Agreement shall bind any successor, heir or assign of the Developer, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the County. The County makes the Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

6.3 Notice of Expiration of Term.

At least six (6) months prior to the expiration of the Term the Developer shall provide by first-class mail, postage prepaid, a notice to all Tenants in Units containing (a) the anticipated date of the expiration of the Term, (b) any anticipated Rent increase upon the expiration of the Term, (c) a statement that a copy of such notice will be sent to the City, and (d) a statement that a public hearing may be held by the City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. The Developer shall also file a copy of the above-described notice with the County Administrator. In addition, Developer

shall comply with all requirements set forth in California Government Code Sections 65863.10 and 65863.11 or successor provisions and all other requirements of State and federal law.

6.4 Effect of Other Financing Programs.

The Development may be subject to the terms of other governmental subsidy programs. This Agreement and the agreements entered into by the Developer pursuant to these subsidy programs independently regulate Units in the Development. If any provision of another regulatory agreement is found in conflict or in contradiction with the terms of this Agreement in relation to the Units, the most restrictive requirement, providing the greatest affordability to the most Tenants for the longest term, shall apply to those Units, except as otherwise specified.

6.5 Loan Documents.

In the event of any conflict among the Loan Documents, the most restrictive requirements shall apply.

6.6 Covenants to Run With the Land.

The County and the Developer hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement, said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the County expressly releases such conveyed portion of the Property from the requirements of this Agreement.

6.7 Indemnification.

(a) To the full extent permitted by law, the Developer shall indemnify, defend at its own expense, and hold the County and its elected officials, officers, employees and agents in their official capacity (collectively "Indemnitees") harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to the purchase of the Property, development, construction, marketing and operation of the Development, except to the extent such claim arises from the grossly negligent or willful misconduct of the County or Indemnitees. Each Party shall notify the other Party immediately in writing of any claim or damage related to activities performed under this Agreement. The Parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, provided that nothing shall require either party to disclose any documents, records or communications that are protected under the attorney-client privilege or attorney work product privilege.

(b) The provisions of this Section shall survive the expiration of the Term, the reconveyance of the Deed of Trust, and any release of part or all of the Property from the burdens of this Agreement.

6.8 Enforcement by the County.

Any partners of the Developer shall have the right to cure any Default. The County agrees that any cure of a Default by any partners of the Developer shall be deemed to be a cure by the Developer, and shall be accepted or rejected on the same basis as if made or tendered by the Developer. If the Developer fails to perform any obligation under this Agreement, and fails to cure the Default within thirty (30) days after the County has notified the Developer in writing of the Default or, if the Default cannot be cured within thirty (30) days, failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within sixty (60) days, or such longer period as approved by the County, in writing, the County shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law.

(a) Calling the Loan. The County may declare a Default under the Note, accelerate the indebtedness evidenced by the Note, and with respect to the Loan, proceed with foreclosure under the Deed of Trust.

(b) Action to Compel Performance or for Damages. The County may bring an action at law or in equity to compel the Developer's performance of its obligations under this Agreement, and/or for damages.

(c) Remedies Provided Under Loan Agreement. The County may exercise any other remedy provided under the Loan Agreement.

6.9 Attorneys' Fees and Costs.

In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This Section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

6.10 Recording and Filing.

The County and the Developer shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Napa.

6.11 Governing Law and Venue.

This Agreement shall be governed by the laws of the State of California. Venue shall be Napa County.

6.12 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

6.13 Waiver of Requirements.

No waiver of the requirements of this Agreement shall occur unless expressly waived by the County in writing. No waiver will be implied from any delay or failure by the County to take action on any breach or Default of Developer or to pursue any remedy permitted under this Agreement or applicable law. Any extension of time granted to Developer to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the County to any act or omission by Developer shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the County's written consent to future waivers.

6.14 Amendments.

This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Napa.

6.15 Notices.

Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

Developer:	Idaho Pacific West Communities, Inc.
County:	County of Napa County Administration Building 1195 Third Street, Suite 310 Napa, CA 94559 Attention: Housing and Intergovernmental Affairs Director

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

6.16 Severability.

If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

6.17 Multiple Originals; Counterparts.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

[Signatures on following page. All signatures must be notarized.]

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the County and the Developer have executed this Agreement by duly authorized representatives, all on the date first written above.

County:

County OF NAPA, a political subdivision of the
State of California

By:

Chair, Napa County Board of
Supervisors

APPROVED AS TO FORM BY County
COUNSEL

Silva Darbinian, Deputy County Counsel

Developer:

IDAHO PACIFIC WEST COMMUNITIES, INC.,
an Idaho corporation

By: _____

Its:

EXHIBIT "A"
LEGAL DESCRIPTION

The land is situated in the State of California, County of Napa, City of Napa, and is described as follows:

The land referred to in this report is situated in the County of Napa, State of California, and is described as follows:

BEING a portion of the parcel of land described as "Parcel One" in both the Deed to George J. Calhoun, et ux recorded July 11, 1977 in Book 1043 at page 890 of Official Records of Napa County and the Deed to Theodore G. Bell, et ux, recorded July 27, 1956 in Book 518 at page 310 of Official Records of Napa County, and a portion of the parcel of land described in the Deed to the City of Napa, recorded August 11, 1948 in Book 295 at page 237 of Official Records of Napa County, more particularly described as follows:

Commencing on the Western line of said "Parcel One" at the Southwestern corner of the parcel of land described in the Deed to the City of Napa, recorded September 15, 1977 in Book 1051 at page 816 of Official Records of Napa County; thence South 81° 45' East along the Southern line of said City of Napa parcel 297.65 feet to the Southeastern corner thereof on the Eastern line of said "Parcel One"; thence South 00° 24' East along said Eastern line and the Southern prolongation thereof, 136.93 feet; thence North 89° 59' West along a line parallel with and 17.61 feet distant measured at right angles Southerly from the Southern line of said Calhoun parcel, 295.84 feet to the Southern prolongation of the Western line of said parcel; thence North 00° 06' East along said prolongation to and along said Western line, 179.54 feet to the point of commencement.

APN 046-011-017; -018